

## FDIC ASSESSMENTS ON FIDUCIARY BANK DEPOSITS

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Mr. BUSH, from the Committee on Banking and Currency, submitted  
the following

## R E P O R T

[To accompany S. 1798]

The Committee on Banking and Currency, to whom was referred the bill (S. 1798) to amend the Federal Deposit Insurance Act to eliminate the payment of premiums on deposits of trust funds by fiduciary banks in uninsured banks, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

## PURPOSE OF THE BILL

The purpose of the bill is to eliminate the present requirement that banks acting as fiduciaries must pay assessments to the Federal Deposit Insurance Corporation on trust funds deposited in uninsured mutual savings banks, when the funds so deposited are, in most cases, not protected by the Federal Deposit Insurance Corporation. The bill also makes it clear that there is no insurance on such deposits.

## GENERAL STATEMENT

When a bank acts as a fiduciary, e.g., a trustee, executor, guardian, etc., it may keep the cash belonging to the trust estate in a bank insured by the Federal Deposit Insurance Corporation, or in a bank not insured by the Federal Deposit Insurance Corporation, or it may retain the cash itself, in which case it is acting as a bank of deposit as well as a fiduciary.

In Connecticut and Massachusetts, many mutual savings banks are not insured by the Federal Deposit Insurance Corporation, but by State insurance funds. In Connecticut it is, as a general rule, within the scope of a fiduciary's authority to deposit trust funds at interest in a mutual savings bank not insured by the Federal Deposit Insurance Corporation, and on occasion a will or a deed of trust specifically requires that the trust fund's cash must be kept in a

particular mutual savings bank, which may not be insured by the Federal Deposit Insurance Corporation.

Under the present law a fiduciary bank is required to pay a Federal Deposit Insurance Corporation assessment or premium on all deposits with it, including all trust funds held by it as a fiduciary, except such trust funds as are deposited by it in another insured bank, in which case the insured bank of deposit pays the Federal Deposit Insurance Corporation assessment. If the insured fiduciary bank places cash belonging to a trust in an uninsured savings bank, the fiduciary bank must pay the Federal Deposit Insurance Corporation assessment. The Federal Deposit Insurance Act now states that such a deposit is insured. However, the provisions of the act setting forth the circumstances under which the Federal Deposit Insurance Corporation's insurance obligation matures (sec. 11) are such that ordinarily no collection may be made on the insurance. The Federal Deposit Insurance Corporation report on S. 1798 states this problem as follows:

However, insured deposits may be paid only when an insured bank is closed for liquidation. Thus, questions may arise whether the Corporation is liable for insurance on the loss of such trust funds lawfully deposited by a fiduciary insured bank in a noninsured bank which has closed and the fiduciary insured bank is not liable for the loss, and, if the Corporation is liable, whether the Corporation must pay the amount of such loss at the time of closing of the noninsured bank or whenever the fiduciary insured bank is closed for liquidation.

This has two undesirable aspects: First, assessments are paid on deposits which, for all practical purposes, are not insured, and; second, deposits are at least nominally insured while in an uninsured bank over which the Federal Deposit Insurance Corporation has no supervisory authority.

These provisions confuse the bank's status as a fiduciary and the bank's status as a bank of deposit. The fact that an insured bank holds trust funds as a fiduciary should not subject it to an assessment, any more than if an individual held the same funds as a fiduciary. The proper test for the assessments for Federal deposit insurance is the place of deposit of the trust funds. If the bank of deposit is insured, it should pay the assessments and provide the insurance, whether this is the fiduciary bank or some other bank. But, if the bank of deposit is not insured, there should be no assessments and no insurance.

S. 1798 would correct this situation. It would remove from the definition, in section 3 of the act, of the deposits of an insured bank those trust funds which the fiduciary deposits in a bank which is not insured by the Federal Deposit Insurance Corporation. Trust funds deposited by a fiduciary insured bank in another insured bank would still be included within the definition of the insured fiduciary bank's deposits, but would, under section 7(a) of the act, be deducted from the bank's deposits in computing its assessment base. Section 7(i) of the act as amended makes it clear that trust funds held by an insured fiduciary bank in any of its departments would be insured by the Federal Deposit Insurance Corporation, up to \$10,000 for each trust estate, and that trust funds deposited by a fiduciary bank

in another insured bank would be similarly insured to the fiduciary bank according to the trust estates represented. However, under the amended section 7(i), trust funds deposited by an insured fiduciary bank in a bank not insured by the Federal Deposit Insurance Corporation would not be insured.

The changes which would be made by S. 1798 were included in sections 2(j) and 28 of title III of the financial institutions bill, as it passed the Senate in 1957 (S. 1451, 85th Cong.). At that time the Federal Deposit Insurance Corporation recommended the proposal and testified in support of it. The Advisory Committee for the Study of Federal Statutes Governing Financial Institutions and Credit approved the recommendation in its report to this committee dated December 17, 1956.

The Federal Deposit Insurance Corporation and the Treasury Department have recommended enactment of S. 1798. The Board of Governors of the Federal Reserve System has advised that it has no objection to favorable consideration of S. 1798. The National Association of Supervisors of State Banks and the Connecticut Bankers Association have recommended the proposal.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

#### FEDERAL DEPOSIT INSURANCE ACT (64 STAT. 873; 12 U.S.C. 1811)

\* \* \* \* \*

SEC. 3. As used in this Act—

\* \* \* \* \*

(l) The term "deposit" means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obligated to give credit to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, and trust funds held by such bank whether retained or deposited in any department of such bank or [deposited in another bank] *deposited in another insured bank*, together with such other obligations of a bank as the Board of Directors shall find and shall prescribe by its regulations to be deposit liabilities by general usage: \* \* \*

(m) The term "insured deposit" means the net amount due to any depositor for deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of \$10,000. \* \* \*

\* \* \* \* \*

(p) The term "trust funds" means funds held by an insured bank in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

\* \* \* \* \*

SEC. 7. (a) The assessment rate shall be one-twelfth of 1 per centum per annum. The semiannual assessment for each insured bank shall

be in the amount of the product of one-half the annual assessment rate multiplied by the assessment base. The assessment base shall be the amount of the liability of the bank for deposits, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3, without any deduction for indebtedness of depositors: *Provided*, That the bank—

(1) may deduct \* \* \* (ii) trust funds held by the bank in a fiduciary capacity and which are deposited in another insured bank; \* \* \*

\* \* \* \* \*

(i) Trust funds held by an insured bank in a fiduciary capacity [whether held in its trust or deposited in any other department or in another bank] *whether held in its trust department or deposited in any other department of the fiduciary bank* shall be insured in an amount not to exceed \$10,000 for each trust estate, and when deposited by the fiduciary bank in another insured bank such trust funds shall be similarly insured to the fiduciary bank according to the trust estates represented. Notwithstanding any other provision of this Act, such insurance shall be separate from and additional to that covering other deposits of the owners of such trust funds or the beneficiaries of such trust estates: *Provided*, That where the fiduciary bank deposits any of such trust funds in other insured banks, the amount so held by other insured banks on deposit shall not for the purpose of any certified statement required under subsections (b) and (c) of this section be considered to be a deposit liability of the fiduciary bank, but shall be considered to be a deposit liability of the bank in which such funds are so deposited by such fiduciary bank. The Board of Directors shall have power by regulation to prescribe the manner of reporting and of depositing such trust funds.

\* \* \* \* \*

SEC. 11. (a) \* \* \* On and after August 23, 1935, the Corporation shall insure the deposits of all insured banks as provided in this Act: \* \* \*

\* \* \* \* \*

(f) Whenever an insured bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section either (1) by cash or (2) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured bank in an amount equal to the insured deposit of such depositor: \* \* \*

\* \* \* \* \*

(h) As soon as possible after the closing of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the closed bank or the public, shall organize a new national bank to assume the insured deposits of such closed bank and otherwise to perform temporarily the functions hereinafter provided for. \* \* \*

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